# Federal Circuit Patent Updates - March 2011

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***In Re Violation of Rule 28(D)*** **[ORDER] (Miscellaneous Docket No. 976) (Dyk, Prost, Moore)**

## March 29, 2011 8:33 AM

(Dyk) Sanctioning counsel for extensive use of improper confidentiality designations.

A full version of the text is available here.

***In Re Jung*** **(2010 1019) (Gajarsa, Linn, Dyk)**

## March 28, 2011 11:01 AM

(Linn) Affirming finding of anticipation and obviousness claims directed to photo-detector array system. The examiner made a prima facia case of anticipation and the Board did not improperly act as a "super-examiner" by performing independent fact finding.

A full version text is available here.

***In Re BP Lubricants USA Inc.*** **[ORDER] (Miscellaneous Docket No. 960) (Lourie, Gajarsa, Linn)**

## March 21, 2011 10:20 AM

(Linn) Granting in part petition for writ of mandamus and directing district court to dismiss false marking complaint with leave to amend. "This court holds that Rule 9(b)'s particularity requirement applies to false marking claims and that a complaint alleging false marking is insufficient when it only asserts conclusory allegations that a defendant is a 'sophisticated company' and 'knew or should have known' that the patent expired." A false marking complaint must "provide some objective indication to reasonably infer that the defendant was aware that the patent expired."

A full version of the text is available here.

***Innovention Toys V. MGA Entertainment*** **(2010 1290) (Rader, Lourie, Whyte)**

## March 21, 2011 9:35 AM

(Lourie) Affirming summary judgment of literal infringement, but reversing summary judgment of non-obviousness. The district court erred in viewing electronic games as non-analogous art to claims directed to a board game and erred in defining the level of skill in the art as that of a layperson.

A full version of the text is available here.

***American Piledriving Equipment V. Geoquip*** **(2010 1283, 1314) (Bryson, Gajarsa, Linn)**

## March 21, 2011 9:25 AM

(Linn) Reviewing different claim constructions of the same claims from different district courts in three consolidated appeals involving pile driving equipment, affirming summary judgment of non-infringement with respect to some equipment and reversing summary judgment with respect to other equipment.

A full version of the text is available here.

***Old Reliable Wholesale, Inc. V. Cornell Corp.*** **(2010 1247) (Newman, Mayer, Bryson)**

## March 16, 2011 10:45 AM

(Mayer) Reversing finding that case was exceptional and vacating award of attorney fees. Patent owner had reasonable grounds for continuing to argue that its patent was valid even after the inventor testified at deposition that the prior art and a commercial embodiment of the patent did "exactly the same thing." The patent office's actions during a reexamination also supported the reasonableness of the patent owner's position.

A full version of the text is available here.

***Abraxis Bioscience, Inc. V. Navinta LLC.*** **(2009 1593) (Rader, Newman, Lourie, Bryson, Gajarsa, Linn, Dyk, Prost, Moore, O'Malley)**

## March 14, 2011 10:14 AM

Per Curiam. Denying petitions for panel rehearing and rehearing en banc. Gajarsa, Linn, and Dyk concurred reasoning that the Federal Circuit panel properly found under federal law that plaintiff lacked standing since it did not own the patents when it filed the complaint. O'Malley and Newman dissented and would have granted the petition for rehearing en banc arguing that state law controls whether plaintiff owned the patents.

A full version of the text is available here.